Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

No. 79-6305

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

ROBERT DiFALCO, APPELLANT

v.

COMMISSIONER OF INTERNAL REVENUE

ON APPEAL FROM THE ORDER OF THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOTION TO DISMISS

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D. C. 20530

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Pursuant to Rule 16.1 of the Rules of this Court, respondent moves to dismiss the appeal. 1/

Petitioner seeks review of the interlocutory order of the court of appeals dismissing his motion for a free transcript of the Tax Court proceedings, and denying certain other motions.

The pertinent facts are as follows: Petitioner filed a petition in the United States Tax Court seeking a redetermination of deficiencies in his federal income taxes determined by the Commissioner for 1973, 1974 and 1975. The Tax Court granted the Commissioner's motions for partial summary judgment and for entry (CR 11, 12, 20). 2/ Petitioner filed a notice of appeal from the order (CR 21). In the court of appeals, petitioner sought a free copy of the transcript of the proceedings below, which the court denied.

1/ Although petitioner has filed a document styled a "Jurisdictional Statement" in this Court, he has not suggested a proper basis for invoking the appellate jurisdiction of this Court.

2/ "CR" refers to the docket control numbers assigned by the clerk of the Tax Court to identify the documents comprising the original record on appeal.

1. The court of appeals correctly denied petitioner's request for a free transcript. Pursuant to 28 U.S.C. 753(f), an appellant may receive a free transcript only if he is proceeding in forma pauperis and a circuit judge certifies that the appeal is not frivolous and presents a substantial question. Maloney v. E.I. DuPont de Nemours & Co., 396 F.2d 939, 940 (D.C. Cir. 1967), cert. denied 396 U.S. 1030 (1970). Here, petitioner failed to demonstrate that he qualified for in forma pauperis status. Moreover, petitioner's appeal does not present a substantial question since he failed to establish that he incurred a deductible business expense in excess of the amounts allowed by the Commissioner.

2. Petitioner also claims (Pet. 2) that the court of appeals erred in denying certain other motions he filed at the same time as his motion for a free transcript. These motions (Pet. App. 8116-8139) concern petitioner's request that the court of appeals order a "Senate Supra-Committee" to break up the "Asian Metal (Platinum/Gold.Silver) Cartel" (Pet. App. 8121). Since petitioner's motions obviously involved matters not pertinent to the tax deductions in question, the court of appeals properly denied them.

The appeal should be dismissed. Treating the appeal as a petition for a writ of certiorari pursuant to 28 U.S.C. 2103, it is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. McCREE, JR.
Solicitor General

MAY 1980